

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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| In the Matter of |) | |
| |) | MM Docket No. 99-25 |
| |) | |
| Creation of a Low |) | RM-9208 |
| Power Radio Service |) | RM-9242 |
| |) | |

To: The Commission

REPLY COMMENTS OF DELMARVA BROADCASTING COMPANY

Delmarva Broadcasting Company ("Delmarva"), pursuant to Section 1.415 of the Commission's Rules, respectfully submits these reply comments with regard to the above-captioned proceeding, in which an overwhelming number of comments highlighted the lack of study and deliberation that must be undertaken prior to the adoption of any proposal that would create hundreds or thousands more FM radio stations ("low power FM" or "LPFM"). 1/

This entire proceeding has been replete with too much haste. The Commission issued the *Notice* despite not having conducted any significant tests of real-world receivers or potential interference problems. It then extended the comment period, but for far less time than was necessary for even its own experts to complete a detailed examination of the technical risks critical to a proper understanding of the Proposal. It noted the key relationship between LPFM and the digital radio, but chose

1/ *Notice of Proposed Rule Making, Creation of a Low Power Radio Service*, MM Docket No. 99-25 (released February 3, 1999) ("*Notice*").

not to run the proposals' comment periods concurrently, and it failed to consider other proposals that might achieve its goals in any public proceeding before embarking on this Proposal.

Yet, the sweeping changes inherent to the Proposal are not something that should be decided quickly or without sufficient data (or without public comment regarding the methodologies used to obtain that data). Whether the Proposal is adopted must depend on what is technically possible and desirable. That decision cannot be made merely by counting noses of who chooses to comment. Rather, it requires a sober assessment of how the Proposal will harm the existing U.S. radio consumers, and whether the flood of new FM stations will do anything significantly to benefit those consumers without overburdening the abilities of the Commission or the spectrum used by existing FM services, ranging from full power FM stations to reading services for the visually impaired.

The record of this proceeding demonstrates that the Proposal should be rejected in favor of safer and better means to achieve the Commission's purposes. The studies in the record show that the proposed sweeping and permanent waiver of interference safeguards will cause objectionable interference to existing FM services, on which the public already depends for its information and entertainment. Even the Commission's own admittedly incomplete *Interim Report* did not begin to demonstrate that LPFM will not harm existing FM services, 2/ especially as it failed to consider the

2/ See William Inglis & David Means, Interim Report, Project TRB-99-3, *Second and Third Adjacent Channel Interference Study of FM Broadcast Receivers* (released August 5, 1999) ("*Interim Report*").

negative effect LPFM would have on most radios -- including more common and more readily affordable clock or portable radios.

In contrast to the failings of the *Interim Report*, and the telling absence of any reliable technical study supporting LPFM, several comprehensive analyses each show that LPFM *will* cause widespread interference to existing radio services, especially to the inexpensive receivers on which the medium depends. The results of such studies should not be surprising: obviously, the Commission has not previously limited the number of broadcast voices available to the American public through such interference safeguards for no reason. And, as the comments make plain, the technical deficiencies of the LPFM Proposal do not end with interference, but range from diminished flexibility to the increased likelihood of improper operations.

Moreover, better means may be developed to accomplish the Commission's ends. Delmarva's stations are just one example of the existing diversity of programming available; the Commission does not need to gamble the benefits of such existing services in a technically unsound attempt to enhance such diversity. Worse, pro-LPFM comments offer little reason -- short of constitutionally or legally dubious means -- to think the creation of LPFM stations is likely to further broaden the diversity of quality programming.

This proceeding has attracted considerable public attention. But the Proposal ultimately should not be adopted based on the number of comments cast for and against . Rather, the Proposal should not be adopted unless the record proves beyond all reasonable doubt that LPFM stations, as proposed:

- will not create objectionable interference; and

- will accomplish, in some measurable and significant way, the Commission's intended ends of increasing viewpoint diversity in radio broadcasts, fostering programming of local interest beyond the broad variety already available, and legitimately increasing the number of new entrants into full-power broadcast media.

Because the record in this proceeding provides no non-arbitrary basis for either conclusion, the Proposal to create one or more classes of LPFM services cannot be adopted at this time.

I. THE EVIDENCE IN THE RECORD DOES NOT ENABLE ANY REASONABLE PARTY TO CONCLUDE THAT LPFM STATIONS WILL NOT CAUSE WIDESPREAD INTERFERENCE.

The *Notice* indicates that the Commission founded the Proposal on an assumption that LPFM stations, even those operating on frequencies that would be forbidden to full-power stations, would result in "insignificant" interference to existing services. 3/ Otherwise, the Proposal necessarily would implicate well-established Commission precedent and policies that bar waiver of fundamental interference safeguards unless overwhelming and certain public interest benefits would result, a standard which the Proposal cannot hope to meet. 4/ Yet, despite the thousands of comments filed in this proceeding, the record includes no reliable study that demonstrates the prerequisite fundamental to the Proposal: that LPFM stations, as proposed, will not cause any objectionable interference to established FM services. 5/

3/ *Notice* at ¶ 45.

4/ *See, e.g.,* Delmarva Comments at 2-3.

5/ To the extent LPFM proponents even address such critical technical matters, most content themselves with parroting the superficial or preliminary analysis contained in the *Notice*. *See, e.g.,* Comments of J. Rodger Skinner, Jr. at 32-33. Such

The Commission need look no further than the comprehensive and detailed studies provided by the National Association of Broadcasters (the “NAB Study” or “NAB Comments”) and the joint report -- filed as part of three separate comments -- of National Public Radio, Inc., Consumer Electronics Manufacturers Association, and the Corporation of Public Broadcasting (collectively, the “NPR/CEMA Study”) for evidence. These two analyses confirm what common sense would indicate: the Proposal markedly would increase interference and diminish the overall efficiency of radio. 6/ Perhaps most tellingly, the Studies show that actual results in the field will likely show far more interference -- as the interfering signal interacts with other sources of interference and terrain or atmospheric effects -- than that in the lab. In any event, each Study demonstrates that the *Notice* erred when it presumed that the Proposal would not result in significant interference to existing FM services.

In human terms, of course, the implications of the studies are far more troubling. They mean that a listener accustomed to enjoying a certain FM signal will no longer get that signal as clearly or at all. They mean that, on the whole, the quality of

uninformed assertions are no basis on which to adopt LPFM. For example, suggesting that the Commission’s limited experience with grandfathered short-spaced stations universally justifies the elimination of interference safeguards with regard to LPFM stations already has been shown to be deficient on both logical and technical grounds. *See, e.g.*, NAB Comments at 18-19. Likewise, the sweeping assertion that, *whatever the results of actual receiver testing*, the interference to be caused by LPFM “would be minimal” hardly provides an informed basis for Commission action. Comments of J. Rodger Skinner at 32-33.

6/ *See, e.g.*, Comments of National Association of Broadcasters at 28-40 (explaining that extensive testing shows that interference protections are still necessary, that radio receivers have not improved sufficiently to reject such interference, and that LPFM in particular will cause interference); Comments of

available FM signals will diminish, which in turn will diminish the interest of the public in radio. They mean that many LPFM stations will have even smaller service areas than those projected, because the interference that will result also will disrupt their signals. 7/ They mean that a visually impaired person may not be able to access an FM reading service. 8/ And they mean that it would not be surprising if, in a particular case, implementation of the Proposal could *diminish* the number of listenable and publicly valuable voices available to a particular area or community.

The Commission's *Interim Report* does not demonstrate otherwise, in large part because of the Report's obvious deficiencies. Most important, the *Interim Report* does not study all types of radios. More than three-quarters of all radios sold in the United States in 1998 were clock or portable radios, including walkmans. 9/ Such lower-quality, but inexpensive receivers are responsible for much, if not most, radio listening in the United States. 10/ Yet, the *Interim Report* declines to study such "small, inexpensive receivers with integral antenna," and studies only five "small, moderate-cost receivers with antenna connection." The result, as even a cursory review of the

National Public Radio, Inc. at 15 (noting that, contrary to popular wisdom, the quality of FM radio receivers, on the whole, has not improved over the years).

7/ See NAB Comments at 20-28 (showing that the real-world effect of such interference may disrupt up to 95.8 percent of an LP100's service area).

8/ See, e.g., Comments of Harrisburg Area Radio Reading Service at 1 (fearing that LPFM services would interrupt its reading service, which operates at a low power digital subcarrier likely prone to such interference, to 800 persons who are visually impaired).

9/ *Id.* at 9.

10/ See CEMA Comments at 10.

data makes clear, is an analysis that is hopelessly skewed. Such bias only is exacerbated by the *Report's* decision to evaluate nearly twice as many expensive "stationary" receivers (Category IV) as it does low or moderately priced "stationary" receivers (Categories I and II) combined. ^{11/} Accordingly, the *Report* not only ignores the receiver that is most readily available to persons of low or moderate disposable income levels, but also does not attempt to compensate in some small way by testing more moderately-priced (Category II) models.

In one sense, the shortcomings of the *Interim Report* are understandable: it is difficult to assess the extent of interference that LPFM stations would cause in a real-world environment, especially given the Commission's unexplained need to close public comment on the Proposal so expeditiously. However, such difficulties do not excuse faulty data, but simply underscore the need for more thorough and extensive testing. At the very least, the Commission should strive to avoid the inconsistency that the incomplete *Report* suggests: according to many pro-LPFM comments, LPFM is to be the radio "of the common person;" yet, the *Interim Report* refuses to study whether the most common and easily affordable receivers will work as well or at all in a post-LPFM environment. Such inconsistency between the scope of the *Interim Report* and the aims of this proceeding -- as well as the lack of reliable data disproving the results of the NAB and NPR/CEMA Studies -- underscore that the record does not support adoption of the Proposal at this time.

^{11/} See *Interim Report* at 4-5.

II. THE RECORD ALSO ILLUSTRATES THAT OTHER MEANS OFFER SAFER AND SURER METHODS OF ACHIEVING THE COMMISSION'S INTENDED ENDS.

The past 20 years have witnessed a marked and consistent increase in the number of radio stations. Since 1980, approximately 3,500 radio stations have been added to the nation's radio dial. Such addition of radio stations was not without cost: the increase in AM stations led to the reduction of audio quality in that band, and prompted the Commission to encourage parties to reduce the number of AM stations. ^{12/} Likewise, the proliferation of generally small FM stations in Docket 80-90 weakened the health of the industry -- leaving many stations without sufficient funds to ensure the highest quality of service. ^{13/} But the increase in the number of stations, and other market trends, has enhanced programming diversity. ^{14/} Accordingly, as NAB notes, the Commission should not hastily adopt LPFM because of any immediate and urgent need for additional programming choices. ^{15/}

In fact, it is by no means clear whether the Proposal would significantly enhance existing diversity. At least one minority broadcaster suggests that LPFM stations will endanger existing minority-owned full power services. ^{16/} Others note that

^{12/} The additional dangerous irony that the Proposal might "AM-ize" the FM band is not lost on a number of commenters. *See, e.g.,* NAB Comments at 15. The problems which the AM band still suffers because of overcongestion is reason enough to reject the Proposal.

^{13/} *See, e.g., Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992).

^{14/} NAB Comments at 6 (detailing increases in format diversity since 1996).

^{15/} *Id.* at 7.

^{16/} *See* Comments of Mega Communications, L.L.C. at ii ("LPFMs will harm minority broadcast voices in particular.")

the Proposal cannot ensure that LPFM stations go to particular persons or groups, or offer particular programming. 17/ As a practical matter, it is far from guaranteed that all LPFM stations will develop their own formats, as opposed to simply mimicking -- albeit on a smaller scale -- the successful format (or programming) already available. 18/ Such uncertain benefits should not justify adoption of LPFM, especially as other proposals -- such as a tax-credit program similar to what Delmarva described in its comments -- 19/ could respond to the Commission's stated concerns without *any* increased technical risk.

III. CONCLUSION

The Commission has not explained why this proceeding cannot wait until it can complete and subject to comment detailed technical studies of the Proposal. Without such technical support, the Commission has no basis on which to adopt the Proposal, especially as the Proposal would appear to put at risk all existing FM services without any certain benefit. In addition, Delmarva respectfully submits that the Commission should undertake consideration of other approaches to achieve its ends of more diverse broadcast ownership prior to any further consideration of the Proposal, so that the Commission's analysis could benefit from comparisons among possible strategies.

17/ See, e.g. NAB Comments at 78-80.

18/ See Comments of Brian Helvey & Edward Voccia, Appendix, at 13 (noting that LPFM stations must include "music and related formats" that appeal to their listeners).

19/ Delmarva Comments at 9.

For all the foregoing reasons, Delmarva asks that the Commission reject or refuse to consider any general LPFM Proposal at this time.

Respectfully submitted,

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